

**SECOND AMENDEMENT TO CONTRACT
A56-0-01-19**

This is the second amendment to the original contract and first amendment entered into by and between the State of Indiana acting by and through the Office of the Attorney General (hereinafter the "State") and NX Communications, 119 South Washington Street, Marion, IN 46952 (hereinafter "Contractor").

In consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

Paragraph 2(Consideration) is deleted in its entirety and replaced with:
The total amount payable under this Agreement shall not exceed one hundred ninety-two thousand five hundred and fifty dollars (\$192,550.00). All payment obligations shall be made in arrears in accordance with Indiana law and State fiscal policies and procedures, and Contractor shall provide invoices for services rendered not inconsistent therewith. Contractor may not submit an invoice before the services have been performed.

Paragraph 3 (Term) is deleted in its entirety and replaced with:
The term of this Agreement will be from August 6, 2001 to January 31, 2005.

This amendment shall take effect upon execution.

All other matters previously agreed to and set forth in the original agreement and not affected by this amendment shall remain in full force and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member, or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent, or officer of the firm, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of this agreement.

THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the contract do by their respective signatures dated below hereby agree to the terms thereof.

NX Communications, LLC

By: [Signature]

Title: V.P. Operations

Date: 2/14/02

The Indiana Attorney General

By: [Signature]
Stephen Carter
Attorney General of Indiana

Date: Feb 27, 2002

APPROVED BY:

DEPARTMENT OF ADMINISTRATION

STATE BUDGET AGENCY

By: [Signature]
Glenn Lawrence,
Commissioner

(for) By: [Signature]
Betty Cockrum,
State Budget Director

Date: 2/27/02

Date: 3/1/02

APPROVED AS TO FORM AND
LEGALITY:

By: [Signature] (for)
Stephen Carter, 3/4/02
Attorney General of Indiana

AMENDMENT # 1

This is an amendment to the contract entered into by and between the Office of the Indiana Attorney General (hereinafter referred to as the "State") and NX Communications, LLC (hereinafter referred to as "Contractor") dated March 4 2001.

WHEREAS State has previously engaged Contractor to provide database services and website development for the Telephone Privacy Program; and

WHEREAS the State desires Contractor to provide additional services,

NOW THEREFORE, consideration of the mutual undertakings and covenants hereinafter set forth, the parties agree as follows:

The Contractor's duties and scope of work is expanded to include those items set forth on Exhibit AA, attached hereto and incorporated herein.

The total amount of this action shall not exceed Sixty Thousand (\$60,000.00) Dollars. Total remuneration under this contract is not to exceed One Hundred and Thirty-two Thousand, Five Hundred and Fifty Dollars (\$132,550)

All other matters previously agreed to and set forth in the original agreement and not affected by this amendment shall remain in full force and effect.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the contracting party, or that he/she is the representative, agent, member, or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of this agreement.

THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK.

IN WITNESS WHEREOF, Contractor and the State of Indiana have, through duly authorized representatives, entered into this agreement. The parties having read and understand the foregoing terms of the agreement do by their respective signatures dated below hereby agree to the terms thereof.

NX Communications, LLC

By: [Signature]

Title: President

Date: 14 April 2004

Indiana Office of the Attorney General

By: [Signature] (for)

Stephen Carter, Attorney General

Date: 4-19-04

APPROVED BY:

DEPARTMENT OF ADMINISTRATION

By: [Signature] (for)

Charles R. Martindale,
Commissioner

Date: 4/21/04

APPROVED BY:

STATE BUDGET AGENCY

By: [Signature] (for)

Marilyn Schultz,
Director

Date: 4-22-04

APPROVED AS TO FORM AND
LEGALITY:

By: [Signature] (for)

Stephen Carter,
Attorney General of Indiana

Date: 4-23-04

EXHIBIT AA

- * Provide enhanced capacity webserver with guaranteed availability,
a dedicated processor and traffic capacity \$8,430
- * Provide e-mail server capabilities to include virus screening,
e-mail broadcast notices; IQ notices and area code updates \$3,265
- * Provide CD Production and Replication as requested
CD Production and Duplication - \$6.00 per disk
Printing of List - \$0.15 per page
- * Provide vendor and consumer technical support in the
following areas: \$85/hour
Area Code Split
Hacker Prevention/Defense
Remote administrative functions including payment processing;
vendor account information access
Data verification and scrubbing for mailing, including
Call Center imported data

Total this Exhibit Not to Exceed \$60,000.00

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is between the Office of the Indiana Attorney General (hereinafter the "State") and NX Communications LLC, whose address is 119 S. Washington St., Marion, Indiana 46952 (hereinafter "Contractor").

WITNESSETH

WHEREAS, the State desires to engage the Contractor to provide database services and website development to the Office of the Indiana Attorney General for the Telephone Privacy Program.

WHEREAS, the Contractor has, among other things, particularized expertise and knowledge in database and website services.

NOW THEREFORE, in consideration of the premises and the mutual promises herein contained, it is agreed by and between the State and Contractor as follows:

1. Duties of Contractor

Contractor shall perform those duties and services more fully set forth in Exhibit A, attached hereto and incorporated herein.

2. Consideration

The total amount payable under this Agreement shall not exceed seventy-two thousand five-hundred fifty dollars(\$72,550.00). All payment obligations shall be made in arrears in accordance with Indiana law and State fiscal policies and procedures, and Contractor shall provide invoices for services rendered not inconsistent therewith. Contractor may not submit an invoice before the services have been performed.

3. Term

The term of this Agreement will be from August 6, 2001 to August 5, 2004.

4. Option to Extend the Term of the Agreement

A. The State may extend the term of this Agreement by written notice to the Contractor within sixty (60) days from the expiration date.

B. If the State exercises this option, the extended Agreement shall be considered to include this option provision. The term of the extended Agreement may not be longer than the term of the original Agreement.

5. Independent Contractor

Both parties hereto, in the performance of this Agreement, will be acting in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither

party will assume any liability for any injury (including death) to persons, or any damage to employees or subcontractors of the other party. Contractor shall be responsible for providing all necessary unemployment and worker's compensation insurance for Contractor's employees.

6. Work Standards

Contractor agrees to execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product or the working relationship with those individuals assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals.

7. Contractor Liability if Audited

The Contractor will assume that all financial and statistical information provided to the Contractor by the State, its employees or representatives is accurate and complete. The Contractor, however, will provide assistance to the State in the course of the State Board of Accounts audit performed on the Comprehensive Annual Financial Report.

8. Access to Records

Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the cost incurred. Contractor shall make such materials available at its offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the State or by any other authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

9. Assignment

Contractor shall not assign or subcontract the whole or any part of this Agreement without the State's prior written consent. Contractor may assign its right to receive payments to such third parties as Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

10. Successors and Assignees

Contractor binds its successors, executors, administrators, and assignees to all covenants of this Agreement. Except as above set forth, Contractor shall not assign, sublet or transfer any interest in this Agreement without the prior written consent of the State.

11. Key Person(s)

A. If the parties have designated that certain individual(s) are essential to the services to be provided, the parties agree that should such individual(s) leave

Contractor's employment during the term of this Agreement for whatever reason, the State shall have the right to terminate this Agreement upon (30) days prior written notice.

B. In the event that Contractor is an individual, that individual shall be considered a key person and, as such, essential to the Agreement. Substitution of another for Contractor shall not be permitted without express written permission from the State.

C. Nothing in sections A or B, above, shall be construed to prevent Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

12. Changes in Work

In the event the State requires a major change in scope, character or complexity of the work after the work has progressed, adjustments in compensation to Contractor shall be determined by the State in the exercise of its honest and reasonable judgment. Contractor shall not commence any additional work or the change of the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

13. Force Majeure

In the event that either party is unable to perform any of its obligations under this Agreement -- or to enjoy any of its benefits -- because of natural disaster, actions or decrees of governmental bodies, or communication line failure not the fault of the affected party (hereinafter referred to as a Force Majeure Event), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Agreement shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Agreement.

14. Renewal Option

This Agreement may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with 25 IAC 1.1-1-16(c). Exercise of this option is at the sole discretion of State and is not subject to agreement or acceptance by Contractor. The renewal term of the Agreement may not exceed the original term.

15. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, if any, with respect to his or her hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of contract. Acceptance of this Agreement also signifies compliance with applicable Federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

16. Multi-Term Funding Cancellation

When the director of the state budget agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a multiterm contract, the multiterm contract shall be canceled. A determination by the budget director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

17. Termination for Convenience

This contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services rendered prior to the effective date of termination. The State will not be liable for services performed after effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to Contractor exceed the original contract price due on contract or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

18. Conflict of Interest

A. As used in this section:

“Immediate Family” means the spouse and unemancipated children of an individual.

“Interested Party” means:

1. The individual executing this Agreement;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means the State Ethics Commission.

B. The Department may cancel this Agreement without recourse by Contractor if any interested party is an employee of the State of Indiana.

C. The Department will not exercise its right of cancellation under section B, above, if Contractor gives the Department an opinion by the Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or code relating to ethical conduct of state employees. The Department may take action, including cancellation of this Agreement, consistent with an opinion of the Commission obtained under this section.

D. Contractor has an affirmative obligation under this Agreement to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

19. Taxes

The State of Indiana is exempt from State, Federal and local taxes. The State will not be responsible for any taxes levied on Contractor as a result of this Agreement.

20. Compliance with Laws

Contractor agrees to comply with all applicable federal, state and local laws, rules, regulations or ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the State and Contractor to determine whether the provisions of the Agreement require formal amendment.

21. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition

The Contractor further agrees that all information, data, finding, recommendations, proposals, etc. by whatever name described and by whatever form therein secured, developed, written or produced by the Contractor in furtherance of this Agreement shall be the property of the State. The Contractor shall take such action as is necessary under law to preserve such property rights in and of the State while such property is within the control and/or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use such information, data, findings, recommendations, proposals, etc.

22. Confidentiality of State Information

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain confidential and protected data. Therefore, the Contractor promises and assures that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Agreement, will not be disclosed to

others or discussed with others or discussed with other parties without the prior written consent of the State.

23. Default by State

If the State, sixty (60) days after written notice, fails to cure any breach of this Agreement, then Contractor may cancel and terminate this agreement and collect all monies due up to and including the date of termination.

24. Governing Laws

This Agreement shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

25. Indemnification

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officers, and employees from all claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Contractor. The State shall not provide such indemnification to Contractor.

26. Substantial Performance

This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

27. Waiver of Rights

No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

28. Payments

All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures.

29. Disputes

Should any disputes arise with respect to this Agreement, Contractor and the State agree to act immediately to resolve any such disputes. Time is of the essence in the resolution of disputes.

Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Contractor fail to continue to perform his responsibilities as regards all non-disputed work without delay, any additional costs incurred by the State or Contractor as a result of such failure to proceed shall be borne by Contractor, and Contractor shall make no claim against the State for such costs. If the State and Contractor cannot resolve a dispute within ten (10) calendar days following notification in writing by either party of the existence of said dispute then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Contractor and the State within ten (10) calendar days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless Contractor mails or otherwise furnishes to the Commissioner, within ten (10) days after receipt of the Commissioner's decision, a written appeal. Within ten (10) days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to Contractor of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for Contractor to terminate this Agreement, and Contractor may bring suit to collect without following the disputes procedure contained herein.

30. Drug-Free Workplace

Contractor hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement a drug-free workplace, and that he will give written notice to the contracting state agency and Indiana Department of Administration within ten (10) days after receiving actual notice that an employee of Contractor has been convicted of a criminal drug violation occurring in Contractor's workplace.

It is further expressly agreed that the failure of Contractor to comply in good faith with the terms of the above paragraph, or falsifying or otherwise violating the terms of the following Drug-Free Workplace Certification shall constitute a material breach of the Agreement, and shall entitle the State to impose sanctions against Contractor including, but not limited to, suspension of contract payments, termination of this Agreement and/or debarment of Contractor from doing further business with the State for up to three (3) years.

Drug-Free Workplace Certification

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts with and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by Contractor and made a part of the contract or agreement as part of the contract documents. False certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or agreement and/or debarment of contracting opportunities with Contractor for up to three (3) years.

Contractor certifies and agrees that it will provide a drug-free workplace by:

- a. Publishing and providing to all of its employees a statement notifying their employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that will be taken.
- b. Establishing a drug-free awareness program to inform their employees of (1) the dangers of drug abuse in the workplace; (2) Contractor's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.
- c. Notifying all employees in the statement required by subparagraph (a) above that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.
- d. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (c)(2) above, or otherwise receiving actual notice of such conviction.
- e. Within thirty (30) days after receiving notice under subdivision (c)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- f. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (a) through (e) above.

31. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

32. Notice to Parties

Whenever any notice, statement or other communication shall be sent to the State or Contractor, it shall be sent to the following address, unless otherwise specifically advised.

A. Notice to the State shall be sent to:

Office of the Attorney General
Attn: Tony Rogers
402 W. Washington Street
IGCS, 5th Floor
Indianapolis, IN 46202

B. Notice and payments to the Contractor shall be sent to:

NX Communications LLC
ATTN: Scott A. Linn
119 S. Washington Street
Marion, Indiana 46952

33. Ownership of Documents & Materials

All documents, records, programs, data, film, tape, articles, memos, and other materials developed under this Agreement shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such matters will be the property of the State of Indiana. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of the services specified herein, the Contractor shall be responsible for any loss or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided damage thereto shall be restored at the Contractor's expense. Full, immediate, and unrestricted access to the work product of the Contractor during the term of this Agreement shall be available to the State.

34. Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he is the contracting party, or that he is the representative, agent, member, or officer of the contracting party, that he has not, nor has any other member, employee, representative, agent, or officer of the firm, company, corporation or partnership represented by him, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he has not received or paid, any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of this agreement.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year written below.

NX Communications LLC

By: [Signature]
Scott A. Linn

The Indiana Attorney General

By: [Signature] for
Stephen Carter
Attorney General of Indiana

Date: 29 Aug 2001

Date: Sept. 9, 2001

APPROVED BY:

DEPARTMENT OF ADMINISTRATION

STATE BUDGET AGENCY

By: [Signature]
Glenn Lawrence,
Commissioner

(for) By: [Signature] (for)
Betty Cockrum,
State Budget Director

Date: 9/14/01

Date: 9/26/01

APPROVED AS TO FORM AND
LEGALITY:

By: [Signature] (for)
Stephen Carter,
Attorney General of Indiana

Date: 10-12-01

EXHIBIT A

Contractor:

NX Communications LLC
119 S Washington Street
Marion, Indiana 46952

Scott A. Linn
765-668-2787
765-668-2789 Facsimile

Statement of Work:

Database Start-up		17,290.00
<ol style="list-style-type: none">1. Provide database startup services, including include programming for a website and telephone privacy database, webserver software, data entry workstations, and installation and configuration work for the Office of the Attorney General (OAG) for the Telephone Privacy program.2. Using existing hardware and software, establish database program(s) to receive, maintain and report on Indiana resident registration(s) for the Telephone Privacy Program3. Develop website for Indiana residents to register on-line free of any charges.4. Develop website and capability for telemarketing firms to acquire the Telephone Privacy list on-line after remittance of payment.		
Monthly Maintenance Services	\$1,535.00/ month 36 months	55,260.00
Including:		
<ol style="list-style-type: none">1. Monthly maintenance of database and website.2. Remit payments generated from telemarketing firms to OAG per instructions and in accordance with agreed-upon accounting procedures.3. Release to telemarketing firms, after remittance of the applicable fee, <u>only</u> telephone numbers of registrants. At no time may name or addresses be released.4. Provide registration and telemarketing sale reports and database files to the designated OAG point of contact, as requested.		
Total not to exceed		\$ 72,550.00

The telephone privacy databases and sales to telemarketing firms are the property of the Indiana Attorney General and may not be used for any purpose other than set forth herein.